THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.15577 of 2004

ORDER:

1 This petition is filed questioning the action of the first respondent in seizing 130 bags of brown colour jaggery, each bag containing 30 kgs, on 27.10.2002 and registering a case in Crime No.227 of 2002 against the petitioner under the A.P. Excise Act 1968 (the Act).

2 The case of the petitioner is that on 27.10.2002 at about 1.00 PM first respondent and others visited his godown bearing No.3-1-11 where he stored jaggery and other kirana articles and seized 130 bags of brown colour jaggery each bag containing 30 kgs and registered a case in Crime No.227 of 2002 against him under Section 34(e) of the Act. Since jaggery is not an intoxicant within the meaning of the Act, possession of jaggery is not an offence under the Act. So the action of the first respondent in seizing the jaggery and registering a case against him is unwarranted and hence the F.I.R. registered against him is liable to be quashed and the first respondent may be directed to return the jaggery seized from him.

3 Though the case is of the year 2004, respondents did not file counter affidavit on their behalf.

4 The panchanama of seizure shows that after taking a sample of 250 grams for analysis, 130 bags of brown colour jaggery was seized from the godown of the petitioner. Since the learned Government Pleader is unable to show any G.O. or order, under which 'jaggery' is notified as an 'intoxicant' under the provisions of the Act, it is clear that 'jaggery' or 'brown colour jaggery' is not an 'intoxicant' within the meaning of the Act. The police will have the right or authority to seize an article or stock under the provisions of the Act only in case it is notified as an 'intoxicant'.

5 Seizing of 'jaggery' which is not notified as an intoxicant, and registering a case under section 34(e) of the Act shows the high-handedness in which the first respondent acted and harassed the

petitioner.

6 Since possession of jaggery per se is not an offence under the provisions of the Act, F.I.R registered against the petitioner for being possession of jaggery is liable to be quashed. Petitioner is entitled to return of the jaggery seized or its value from the first respondent.

7 Therefore, the petition is allowed and the F.I.R registered against the petitioner is quashed. First respondent is directed to return the jaggery seized from the petitioner or its value, with interest at 12% p.a. from the date of seizure up to the date of payment to the petitioner within a period of one week from the date of receipt of a copy of this order. First respondent who seized the stock from the petitioner shall pay the costs of the petition personally to the petitioner. Advocate fee is fixed at Rs.1,000/-

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C.Y.Somayajulu, J.

06.11.2007

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